

REMARKS/ARGUMENTS

The FINAL Office Action of May 21, 2007 has been carefully reviewed. This Request for Reconsideration is responsive thereto. Applicants wish to thank the Examiner for the courtesy extended them of a personal interview at which a supplemental amendment, hand-carried for consideration by the Examiner at the personal interview held March 6, 2006, was discussed. Claims 55-62 were then added to present claims of varying scope in addition to the presently pending and amended claims 43-46 and 49. Applicants believe that the Examiner appreciates that the claims 55 et seq. were inadvertently mis-numbered and the Examiner, for example, must recognize that claim 61 should have been numbered 62 dependent on claim 55 because he has provided a 103 rejection of claim 62 which could only be applicable to claim 62.

By this amendment, claims 43-46 and 49 are cancelled without prejudice or disclaimer and only claims 55-62 remain. Claims 59 and 62 have been rewritten in independent form to incorporate the limitations of claim 55 on which they separately depend. Consequently, claims 55, 59 and 62 are independent and claims 57-58 and 61 are dependent claims on claim 55.

Claims 55-62 stand rejected as obvious under combinations of not less than four references. Although the Examiner allegedly provides "some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness" as required by the Supreme Court in *KSR v. Teleflex* it is respectfully submitted that "a factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon *ex post* reasoning." (*KSR*, April 30, 2007, slip opinion, p. 14, United States Supreme Court, 55 US ____ (2007)) Such is the case here, where the Examiner has "fit the teachings of multiple patents together like pieces of a puzzle," but, inadvertently, may have read claims 55-62 on the pieces of the puzzle in hindsight, without ensuring that the former TSM test is met and leaving missing elements in the rejected claims so that no present combination of references provides the missing elements.

The rejection of claim 55 will be discussed first, followed by a discussion of claim 59, now written in independent form. A discussion of the patentability of claim 55 is followed by a discussion of claim 59, followed by a discussion of claim 62 and lastly by a discussion of each

rejected claim 56-58 and 61 dependent on claim 55. Reconsideration and allowance of claims 55-62 are requested in view of the following remarks.

Rejection of Claim 55

Claim 55 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Herman et al. (US 6633757), in view of Fitzgerald (US 6564056) in view of Marchbanks et al. (US 6266401) in further view of Chennakeshu et al. (US 6542758). In particular, the Examiner alleges that Herman teaches a wireless local area network in which a plurality of devices including a first and second wireless telephone may operate. The Examiner points specifically to Herman, for the following: col. 6, ll. 47-50, "the wireless LAN can be located within a car;" col. 6, 52-60, "the devices can be several cellular phones to share the services;" col. 14, ll.'s 61-63, "2 devices that 'share' services can be of the same type;" col. 15, ll.'s 36-38, "sharing at least one service of the one or more services with the first wireless telephone" and table 1 which shows device *a* mail, description laptop with mail application and native service S(x) being lambda, ASCII and Lambda, event. According to the Examiner, this shows "a laptop with a mail application, i.e. email." Fitzgerald allegedly adds at col. 1, ll. 58-64 (per p. 7 of the FOA) "subscribing to a wireless service provider as in Fitzgerald, with the wireless network that shares services as in Herman," the motivation being "to allow the devices within the wireless communication system to enable devices to communicate with external service providers."

The Examiner then admits that the Herman/Fitzgerald combination lacks "wherein the first and second wireless telephones share a single billing report under the single wireless service plan, and that the first wireless telephone receives one or more services including one of a call forwarding and a voicemail service." The Examiner adds Marchbanks which "provides a consolidated billing system and that the first wireless telephone receives one or more services including one of call forwarding and a voicemail service in figure 6 item 100." The motivation is "to allow for consolidated accounting of services provided (Marchbanks col. 3, ll.'s 43-44)."

Now, the Examiner admits that these three together fail to show "the second telephone is a vehicle wireless telephone, integrated into an electrical control system of the vehicle" and the idea of "hands free dialing." As will be discussed further herein, although Herman may suggest

a wireless LAN within a car, the combination of references misses claimed elements of “sharing” “one of a call forwarding and a voicemail service” between a “vehicular wireless telephone” of “a second wireless service provider” as recited and a “personal wireless telephone” of “a first wireless service provider” as recited.

Continuing the discussion of the Examiner’s rejection of claim 55, the Examiner alleges that “the claims merely recite that the first wireless telephone be subscribed to receive one or more services from a first wireless service provider (which it is since phone 130 (Fitzgerald) can utilize cellular network 108) and the second wireless telephone be subscribed to receive one or more services from a second wireless service provider (which is also the case since the PDA can utilize the services of data network 104).” The problem, again, with this reasoning is that claim 55 calls for more, namely the “sharing” of “one of a call forwarding and a voicemail service” between a “vehicular wireless telephone” of “a second wireless service provider” as recited and a “personal wireless telephone” of “a first wireless service provider” as recited. In other words, a person practicing the invention of claim 55 may retrieve voicemail messages left for their personal phone safely in a hands-free environment of their vehicle ~~or~~ forward calls to their vehicular telephone from their personal telephone when they are in their car. No combination of prior art teaches this feature. There is only a suggestion of sharing services in Herman at col. 15, ll.’s 36-38 in a wireless LAN (not between first and second wireless service providers of vehicular and personal telephone services).

The Examiner lastly includes Chennakeshu which teaches “a telephone for use in a vehicle,” the motivation being “to allow for easy access to the wireless telephone by the driver of the vehicle.” Again, this alleged motivation is pure hindsight and does not provide any motivation for “sharing” “one of a call forwarding and a voicemail service” between a “vehicular wireless telephone” of “a second wireless service provider” as recited and a “personal wireless telephone” of “a first wireless service provider” as recited.

None of the four references in combination teach the features of claim 1 including the other limitations of the claim such as “sharing a single service plan” and a “single billing report” when considered in the context of the specifically recited shared services between personal and vehicular wireless service providers. Claim 55 defines the services provided by each of recited

first and second wireless service providers, defines a vehicular wireless telephone as “integrated into an electrical control system of a vehicle” and so more clearly defines the environment of service and plan sharing and “a single billing report.” Again, no reference applied by the Examiner singly or in combination permits a subscriber to share “one of a call forwarding and a voicemail service” between a “vehicular wireless telephone” of “a second wireless service provider” as recited and a “personal wireless telephone” of “a first wireless service provider” as recited. There is no motivation to combine the four applied references to meet this limitation – this element is missing from the prior art of record and, moreover, all motivations provided by the Examiner do not provide a “reason” as required by *KSR*, rather, they together provide a collection of hindsight reasons for putting together pieces of a puzzle that, even if the pieces could be put together, do not meet the end result – namely, claim 55. Claim 55 is patentable because the Examiner has failed to identify a combination of references which discloses or suggests the specifically recited shared service limitations. Withdrawal of the rejection of claim 55 is respectfully requested.

Claim 59

Claim 59 recites in particular detail “the first wireless service provider providing a shared voicemail service with the second wireless service provider to the vehicular wireless telephone,” and has been rewritten in independent form. Claim 59 is patentable for all the reasons that claim 55 is patentable and further particularly recites the “shared voicemail service” of a first wireless service provider (recalling the limitation from claim 55 that the first wireless service provider supports a “personal wireless telephone” with the “vehicular wireless telephone” of the “second wireless service provider.” No combination of applied references teaches this feature such that a person may achieve the result of getting into their car and retrieving voicemail from the “first wireless service provider” which as recited in claim 55 supports the “first wireless telephone being a personal wireless telephone.” Withdrawal of the rejection of claim 59 is respectfully requested.

Claim 62

The rejection of claim 62 as unpatentable over Herman et al. (US 6,633,757) in view of Fitzgerald (US 6,564,056) in view of Marchbanks et al. (US 6366401) in further view of Chennakeshu et al (US 6,542,758), further in view of Rosener et al. (US 2002/00268655) is respectfully traversed.

Claim 62 has been written in independent form. Claim 62 is patentable for all the same reasons as claim 55 is patentable. Claim 62 stands rejected as unpatentable as discussed above and the Examiner's rejection relies on a misreading of the Rosener reference. The Examiner, in hindsight, has read paragraph 118 out of context. The Examiner may be assuming that Rosener discloses a vehicular telephone built into a car when it does not. Admittedly, Rosener [0118] is poorly written – but only one phone is discussed, a **personal** phone that someone attempts to use when they get into their car.

In particular, Rosener describes at paragraph [0060] two (or more) T28 GSM phones installed in a plastic radome and mounted in the roof of a car on a plastic plate. The phones provide a "Bluetooth interface" which "communicates with wireless devices inside the car, and RF interface communicates with a base station outside the car." The "radome" serves as a repeater for personal phones inside a car. Paragraph [0117] describes deliberately designing the car to attenuate rf transmissions once one gets into a car with their personal telephone, for example, up to 80%. Then, [0118] describes a person entering a car, Bluetooth discovery, and the referred to "phone" is really the personal phone entering the car. The personal phone then communicates with a base station via the car roof repeater. It is believed that the Examiner mistook the discussed phone as a vehicular telephone when the discussed phone is not a vehicular phone as recited, e.g. one providing "hands-free dialing service" service and "integrated into an electrical control system of a vehicle." Rosener comes no closer than Herman's alleged disclosure of a wireless LAN for a vehicle in disclosing, let alone suggesting, the limitations of claim 62, i.e. "the system, upon detecting a proximity of the personal wireless telephone to the vehicular wireless telephone, re-routing a call intended for the personal wireless telephone to the vehicular wireless telephone." **Rosener has no vehicular wireless telephone,**

only personal telephones, and neither discloses nor suggests “re-routing a call . . . to the vehicular wireless telephone” as recited. A driver user of Rosener will be unsafe and violate the law of states in which it is forbidden for a driver of a vehicle to drive an automobile with a personal wireless telephone at their ear. Consequently, the rejection of claim 62 fails as the cited reference to Rosener allegedly supporting claim 62’s limitations fails. Withdrawal of the rejection of claim 62 is respectfully requested.

Claims 56-58 and 61

Claims 56-58 and 61 comprise dependent claims to claim 55 to claim features of the system of claim 55 supported by the specification.

Claim 56 is rejected in view of Chennakeshu Figure 1, item 46, “a display.” The primary reference in Chennakeshu to display 46 reads: “The display 46 is used to display information, such as the number dialed and call status information.” There is no disclosure or suggestion of “displaying MPEG encoded image data.” It is well known that MPEG encoded image data provides a myriad of features beyond mere “number dialed and call status information.” The world of “MPEG encoded image data” can encompass photographs, videos and the like not suggested by the prior art. Claim 56 is patentable for all the reasons that claim 55 is patentable and calls for more than a display. This claim calls for: “the vehicular wireless telephone including a display for displaying MPEG encoded image data.” No reference cited or applied by the Examiner teaches or suggests this feature of displaying “MPEG encoded image data.” Applicants respectfully submit that the Examiner’s reliance on Chennakeshu, which merely discloses a display of information such as number dialed and call status information without disclosing or suggesting that the data be MPEG encoded video data, would improperly write the “MPEG encoded image data” limitation out of the claim. *See, Tronzo v. Biomet*, 156 F.3d 1154 (Fed. Cir. 1991) (claim recited a cup having a “generally conical outer surface”; treating the shape of the cup as irrelevant was impermissible because it would write that limitation out of the claim). Withdrawal of the rejection of claim 56 is respectfully requested.

The Examiner rejects claims 57-58 and 61 in further view of Obradovich et al. (US 6754485). These claims are patentable for all the reasons claim 55 is patentable. Although

navigation and roadside assistance are admittedly known for a vehicular telephone as concierge services, the key words in claims 57 and 58 are “shared concierge service” where the word “shared” must be given some weight and cannot effectively be written out of the claim. *Tronzo v. Biomet, infra.* The only context in which shared makes sense is sharing between a first and second wireless service provider where one supports a personal telephone and the other supports a vehicular telephone as recited. The concept of a personal wireless telephone sharing a concierge service with a vehicular wireless telephone is not shown or suggested by the prior art of record. Claim 61 particularly recites: “the personal wireless telephone receiving concierge service of the second wireless service provider.” In this claim, the “concierge service” known for a vehicular phone is provided to a “personal wireless telephone.” Herman merely hints at sharing services generally and especially in the context of different devices such as personal computers and personal hand-held phones having different capabilities and services provided to them by the **same** service provider. There is no disclosure or suggestion in any cited or applied reference to share concierge services as recited in claims 57-58 and 61. Consequently, these claims are patentable over the applied references for these additional reasons, and withdrawal of the rejection of claims 57-58 and 61 is respectfully requested.

Claim 60

Claim 60 is patentable for the reasons that claim 55 is patentable and further recites: “the personal wireless telephone transferring an electronic mail message to the vehicular wireless telephone.” As with claim 59, the Examiner relies on a general teaching of a shared service for example with a personal computer from Herman. Claim 60, as with other shared service claims, makes it clear that there is a sharing of “one of a call forwarding and a voicemail service” between a “vehicular wireless telephone” of “a second wireless service provider” as recited and a “personal wireless telephone” of “a first wireless service provider” as recited. Moreover, claim 60 particularly adds the “personal wireless telephone transferring an electronic mail message to the vehicular wireless telephone” which is not shown in the prior art because the process is complicated and solved by the present invention when there are two different service providers involved and working under a shared service plan between the personal and vehicular telephone.

Admittedly, it may be well known to have a laptop receive an email message from a personal wireless telephone within the same wireless network *a la Bluetooth* but much more complicated in a vehicular, second service provider environment. Consequently, claim 60 is further patentable because the claimed recitation is not shown by the prior art even in combination, and a bare suggestion as in Herman of sharing services is improper hindsight on the Examiner's part. Withdrawal of the rejection of claim 60 is respectfully requested.

Reconsideration and allowance of claims 55-62 is respectfully requested. A pre-appeal conference is requested so that the issues may be further narrowed for appeal. Applicants are submitting this amendment within two months of the date of the FINAL rejection and, consequently, in plenty of time to hold such a conference and to further narrow the issues. Applicants, per Rule 116(b)(1) cancelled claims and per (b)(2) have placed the remaining claims in better form for consideration on appeal and respectfully request entry. The undersigned may be reached to schedule such a conference to be held in person or to discuss the rejections of the claims in further detail by telephone before the Examiner issues an Advisory Action.

CONCLUSION

All rejections having been addressed, applicant respectfully submits that the instant application is in condition for allowance, and respectfully solicits prompt notification of the same. However, if for any reason the Examiner believes the application is not in condition for allowance or there are any questions, the Examiner is requested to contact the undersigned at (202) 624-7325 before issuing an Advisory Action.

Respectfully submitted,
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Dated this 22nd day of June, 2007

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